IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

First Appeal No. 54 of 2005 **Decided on: April 19,2006**

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date 19.04.2006

(Initial of Judges)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 54 of 2005

1. State of Uttaranchal
   Through Collector, Tehri Garhwal.
2. Tehri Hydro Development Corporation
   through its Chief Managing Director,
   Head Officer, Bhagirati Puram,
   Tehri, District Tehri Garhwal.

…… Defendants – Appellants

Versus

1. Sri Vijai Kumar
   S/o late Ganga Sharan Agrawal
2. Smt. Kusum Agrawal
   W/o late Sri Vinod Kumar.
3. Sri Ravindra Kumar
   S/o late Sri Vinod Kumar.
4. Sri Rajiv Kumar
   S/o late Sri Vinod Kumar.
5. Sri Chandra Prakash
   S/o late Sri Vinod Kumar.
6. Sri Sanjai Kumar
   S/o late Sri Vinod Kumar .
7. Sri Vidya Sagar
   S/o late Sri Ganga Sharan.
8. Sri Vikram Chand
   S/o late Sri Ganga Sharan.
   All R/o Suman Chouk, Tehri
   District Tehri Garhwal.

…… Claimants-Respondents

Mr. Subhash Upadhyaya, Standing Counsel for the State.
Mr. Shobhit Saharia, Advocate for the appellant No. 2.
Mr. Rajendra Dobhal, Advocate for claimants-respondents.

Coram: **Hon'ble Rajeev Gupta, C.J.**
Hon'ble Prafulla C. Pant, J.

Dt: 19th April, 2006.

Hon'ble Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 54 of the Land Acquisition Act, 1894, is directed against the judgment and

award dated 21.12.2001, passed by learned District Judge, Tehri Garhwal, whereby compensation awarded has been enhanced by Rs. 2,65,131.79 paise in favour of the claimants-respondents.

2) Brief facts of the case are that the respondent's land bearing Khata No. 65 (survey sheet No. 92 / 325) situated in Ward No. 5 of old Tehri town was acquired by the Government for the purposes of construction of Tehri Dam. A Notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 10.03.1984 followed by Notification dated 23.03.1985 under Section 6 of the aforesaid Act, in respect of which Special Land Acquisition Officer (Irrigation) Tehri gave its award on 23.03.1987. The Special Land Acquisition Officer assessed the value of the land measuring area 4.138 acres with trees and buildings standing thereon (including land, building and trees belonging to the present claimants-respondents) at Rs. 14,21,057.21 paise with solatium at Rs. 4,26,317.16 paise and interest at the rate of 12% per annum amounting to Rs. 5,15,318.11 paise, totalling to Rs. 23,62,692.48 paise, out of which the present claimants-respondents' share was Rs. 2,69,667.21 paise. Dissatisfied by the same, on the application of the respondents, a reference was made under Section 18 of the Land Acquisition Act, 1984 to the District Judge, Tehri Garhwal (L.A.R. No. 12 of 1987), who after recording the evidence and hearing the parties, enhanced the amount of compensation by Rs. 2,65,131.79 paise. Aggrieved by the same the State and Tehri Hydro Development Corporation have preferred this appeal.

3) We heard learned counsel for the parties and perused the evidence on record.

4) The issues framed by the learned reference court in the matter are as under:

1. *Whether, compensation awarded is inadequate? If so, what is the proper compensation for acquired property?*

2. *To what relief, if any, the claimants are entitled?*

5) Perusal of the record shows, that the Special Land Acquisition Officer while assessing the value of the land and building acquired, relied on the sale deeds of the year 1981 and 1982 i.e. about two to three years before the date of Notification under Section 4 of the Land Acquisition Act, 1894. We are of the view that the Special Land Acquisition Officer has not considered the increasing trend of the market value of the land, in the intervening period between the sale deeds relied, and the land acquired. Records of the reference court shows that in support of their case the claimants- respondents filed certified copies of the sale deeds viz. Ext. 1, Ext. 2 and Ext. 3, which relate to near by land sold in the month of January of the year 1985 i.e. the month and year nearer to the date of acquisition. From these sale deeds, it appears that the market value of the nearby land was not less than Rs. 30 per sq. ft. The statement of P.W. 3, Vijay Pal Singh, seller of the land mentioned in the aforesaid sale deeds, has corroborated the transfer of land at said rate. As such, we have no reason to disagree with the view taken by the reference court in coming to the conclusion that the market

value of the land acquired, assessed by Special Land Acquisition Officer at Rs. 1,83,216.60 paise is, infact, less by Rs. 1,46,790/- from the actual value of the land.

6) The finding of the learned reference court on the value of the building is also based on cogent and trustworthy evidence. P.W. 1, Architect A.S. Kataria, in his statement has given reasons for valuation of the building. He has found that the building was constructed over an area 2587 sq. ft. on the ground floor and 1210 sq. ft. on the first floor, and as such, the construction cost after taking into consideration, the materials in the building was arrived at Rs. 4,05,065/- In the process of valuation, the Architect, thereafter, taken into account depreciation and valued the building, on the date of acquisition at Rs. 3,11,647/-, which does not appear to be unreasonable. In view of that fact, we are in agreement with the learned reference court that the value of the building of the claimants - respondents is Rs. 1,65,000/- as against Rs. 1,34,385/-, assessed by the Special Land Acquisition Officer.

7) We find no error in the impugned award assessing the value of the property of the claimants-respondents at Rs. 3,12,442/- (Rs. 1,46,790/- for land; Rs. 1,65,000/- for building and Rs. 652 for trees). In addition to said amount, the claimants-respondents were entitled, under the law, to the solatium at the rate of 30% and interest at the rate of 12% per annum from the date of Notification under Section 4 of the Land Acquisition Act, 1894, which if taken together, the claimants-present respondents were entitled to compensation to the tune of Rs. 5,19,799/- as against

Rs. 2,69,667.21 paise awarded by the Special Land Acquisition Officer. It is pertinent to mention here, that since, the claimants-respondents, who were uprooted from the old Tehri town with their business, were further rightly allowed a sum of Rs. 15,000/- towards the shifting expenses. Therefore, there is no error of law or that of fact in awarding further compensation to the tune of Rs. 2,654,131.79 paise to the claimants by the reference court.

8) For the reasons as discussed above, the appeal is liable to be dismissed. The appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 19th April, 2006.
H. Negi